

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:17 CR 40 CDP/SPM
	)	
DAWON HICKS	)	
	)	
Defendant.	)	

**MOTION TO CONTINUE HEARING AND FOR TIME TO FILE BRIEF IN SUPPORT OF  
DISCLOSURE OF SUBPOENAED EVIDENCE**

Comes now Defendant DAWON HICKS, to move this Court to continue the hearing currently scheduled on Friday March 16, 2018 for the following reasons:

1. The Court scheduled a hearing for Dwayne Brown to appear and produce an object, specifically, his buccal-swab, on March 16, 2018. Mr. Brown's appearance and production of the buccal material was ordered based on a defense subpoena - so that he may be included or excluded as the contributor of the DNA on the weapon that is the basis for Mr. Hicks' pending Felon in Possession charge. *See* Fed. R. Crim. Pro. 17(c).
2. Mr. Brown's DNA profile is relevant, admissible, identified with specificity, is not readily available through other means at this time, should be reviewed to prepare for trial and to avoid unreasonable delay during trial, and is requested in good faith. The defense sought to secure Mr. Brown's DNA profile in order to expedite the trial by providing a time and place before trial for the inspection of the subpoenaed material. *See e.g. United States v. Shepard*, 2010 WL 750110 (E.D. MO Feb. 26, 2010) (St. Louis Metropolitan Police Department ordered to comply with defense issued subpoena for Procedure Manual for officers in Auto

Theft Division and random sample of four of the Department's retained Form 551s for each of the seven years at issue, as well as other items).

3. On March 14, 2018, Counsel for Mr. Brown filed a Pleading (Doc. # 88), informing the Court that Mr. Brown would not submit a DNA sample without a Court Order (ostensibly a different Court Order from the Order the Court has already issued via subpoena) received by Mr. Brown February 22, 2018. Doc. #88 at 2. No Motion to Quash the subpoena Order has been filed by Mr. Brown pursuant to Fed. R. Crim. P. 17(c)(2).

4. Furthermore, Mr. Brown has requested that his appearance on March 16, 2018 be waived.

*Id.*

5. Counsel for Mr. Hicks requests time to prepare a Brief in support of this Court's authority to:

- Require Mr. Brown to appear and supply a buccal-swab, or
- Order the Missouri State Highway Patrol to provide Mr. Brown's DNA profile pursuant to 34 U.S.C. § 12592 (a)(1)(C) & (3)(B) as well as Federal Circuit, Supreme Court, and Missouri State jurisprudence, or
- Order the St. Louis Metropolitan Police Department to conduct a "key board search" in order to search for a match to the unknown profile that is on the weapon in question and that was obtained through testing paid for and conducted by the defense, or
- Compel the government to retrieve Mr. Brown's DNA profile from Missouri law enforcement agencies and provide it to Mr. Hicks, if after an in camera inspection by this Court, Mr. Brown's DNA profile constitutes exculpatory evidence in this case under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*,

405 U.S. 150 (1972) and other Supreme Court and Eighth Circuit cases that define the scope of exculpatory discovery evidence, or

- Dismiss the case due to Mr. Hick's inability to receive a fair trial.

BY REASON OF THE FOREGOING, the defense moves that this Court continue the hearing currently set on March 16, 2018 and grant counsel for Mr. Hicks 11 days – until March 26, 2018, to file a Brief in support of the Court's authority to order that Mr. Brown submit to a buccal-swab or that his DNA profile be delivered to the defense in this case. The government does not oppose this request for continuance.

Respectfully submitted,  
/s/Robert C. Wolfrum  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2018, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Thomas Mehan, Assistant United States Attorney and John M. Lynch, Attorney for Dwayne Brown.

/s/Robert C. Wolfrum  
ROBERT C. WOLFRUM  
Assistant Federal Public Defender